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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Jenghiz Kn Stewart,  
10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,  
13 Respondents.

No. CV-18-00247-PHX-GMS

**ORDER**

14 Pending before the Court are Petitioner Jenghiz Kn Stewart's Petition for Writ of  
15 Habeas Corpus (Doc. 1) and United States Magistrate Judge John Z. Boyle's Report and  
16 Recommendation ("R&R"), which recommends that the Court deny the Petition. (Doc.  
17 16). Stewart timely filed objections to the R&R. (Doc. 17). For the following reasons,  
18 the Court denies the Petition and accepts the R&R.

19 **BACKGROUND**

20 Because no party has objected to the procedural background as set forth in the R&R,  
21 the Court adopts the background set forth therein. (Doc. 16 at 2-3).

22 Magistrate Judge Boyle recommends that Stewart's petition be denied and  
23 dismissed with prejudice. (Doc. 16 at 16). Stewart timely objects to three of the Magistrate  
24 Judge's conclusions. (Doc. 17). He argues that Ground Three is not procedurally  
25 defaulted. (*Id.* at 7). He also argues that the Magistrate Judge incorrectly determined that  
26 Grounds One and Two lack merit. (*Id.* at 15). Because the R&R correctly analyzed  
27 Stewart's claims, his petition for habeas corpus will be denied.

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1 exhaust a claim for purposes of federal review unless he has presented it to the Arizona  
2 Court of Appeals. *Id.* at 998.

3 Procedural default occurs when a petitioner has not exhausted a federal habeas claim  
4 by first presenting the claim in state court and is now barred from doing so by the state's  
5 procedural rules (including rules regarding waiver and preclusion). *Castille v. Peoples*,  
6 489 U.S. 346, 351 (1989). If a state court properly applies a state procedural bar during  
7 post-conviction proceedings that prevents the state court from considering the merits, those  
8 claims are also procedurally defaulted. *Davila v. Davis*, 137 S.Ct. 2058, 2064 (2017).

9 In the event of procedural default, habeas review is foreclosed absent a showing of  
10 “cause and prejudice.” *Reed v. Ross*, 468 U.S. 1, 11 (1984). To demonstrate cause, a  
11 petitioner must show that “some objective factor external to the defense” impeded his  
12 efforts to raise the claim in state court. *Davila v. Davis*, 137 S. Ct. at 2065 (internal  
13 citations and quotations omitted); *McCleskey v. Zant*, 499 U.S. 467, 493 (1991). “Prejudice  
14 is actual harm resulting from the alleged constitutional violation.” *Thomas v. Lewis*, 945  
15 F.2d 1119, 1123 (9th Cir.1992) (internal quotation omitted).

#### 16 **A. State Court Post-Conviction Relief Proceedings**

17 In July of 2016, Stewart filed a petition for post-conviction relief in Maricopa  
18 County Superior Court. (Doc. 11, Ex. K). There he alleged five separate grounds for relief,  
19 including that his sentence was disproportionately long, that the conviction lacked evidence,  
20 and that the court was biased against him. (Doc. 11 Ex. N. at 1). On appeal, the Arizona  
21 Court of Appeals grouped the five separate grounds into these three general categories. At  
22 no point during these appeals did either court address a claim of vindictive prosecution.

23 In his petition before this Court, Stewart alleges that the Petition to Revoke  
24 Probation was “an act of vindictive prosecution” by his probation officer, because Stewart  
25 had asserted a right to continue in his church ministry.<sup>1</sup> While Stewart points to evidence

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26 <sup>1</sup> As Magistrate Judge Boyle correctly notes, Stewart’s probation officer was not  
27 prohibiting him from continuing to attend church. Rather, his probation officer was  
28 concerned that he was “running a church,” “soliciting community donations,” and through  
this arrangement he was “associating with individuals who have criminal records without  
the permission of the Adult Probation Department and violating sex offender treatment  
rules.” (Doc. 11-1, Ex. D, at 28).

1 in his post-conviction relief petitions that argues that he was treated unfairly, (Doc. 17 at  
2 4), he did not present “both the operative facts and the federal legal theory” to support his  
3 claim. *Castillo*, 399 F.3d at 999. In his objections to the R&R, Stewart even acknowledges  
4 that his claim for vindictive relief was “not enumerated within those petitions.” (Doc. 17  
5 at 7). Because Stewart failed to present this claim to the Arizona Court of Appeals, it is  
6 procedurally defaulted. *See Castillo*, 399 F.3d at 998.

7 **B. Petitioner Has Not Presented Cause to Excuse His Procedural Default**

8 Stewart fails to demonstrate cause that would forgive his procedural default. He  
9 does not point to any outside factors “external to [his] defense” that impeded him from  
10 presenting his claim to the Arizona Court of Appeals. *See Davila*, 137 S.Ct. at 2064.  
11 Stewart possessed all of the relevant facts when he presented his post-conviction relief  
12 petition in state court but failed to allege his claim of vindictive prosecution. The Court  
13 cannot therefore proceed to the merits of his vindictive prosecution claim.

14 **II. Merits Review of Remaining Claims**

15 As for the merits review, Stewart only objects to the Magistrate Judge’s conclusions  
16 as to Grounds One and Two (Doc. 17 at 15), but not for Grounds Four, Five or Six.  
17 Magistrate Judge Boyle found that none of Stewart’s remaining claims entitled him to  
18 relief. (Doc. 16 at 16). Because Stewart objected Magistrate Judge Boyle’s conclusions  
19 as to Grounds One and Two only, the Court’s *de novo* review is limited to those counts.

20 When reviewing habeas claims, a federal court may not grant habeas relief unless  
21 the state’s adjudication of the claims resulted in a decision that was contrary to, or involved  
22 an unreasonable application of, clearly established federal law as determined by the  
23 Supreme Court, or resulted in a decision that was based on an unreasonable determination  
24 of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. §  
25 2254(d)(1); *see Robertson v. Pichon*, 849 F.3d 1173, 1182 (9th Cir. 2017). “This is a  
26 difficult to meet and highly deferential standard for evaluating state-court rulings, which  
27 demands that state-court decisions be given the benefit of the doubt.” *Cullen v. Pinholster*,  
28 563 U.S. 170, 181 (2011) (internal citations and quotations omitted). Review of a prior

1 state court decision under § 2254(d)(1) by a federal court is limited to the record “before  
2 the state court that adjudicated the claim on the merits.” *Id.* “When reviewing state criminal  
3 convictions on collateral review, federal judges are required to afford state courts due  
4 respect by overturning their decisions only when there could be no reasonable dispute that  
5 they were wrong.” *Woods v. Donald*, 135 S.Ct. 1372, 1376 (2015).

6 **A. Disproportionate and Unfair Sentence**

7 In his petition, Stewart argues that his sentence was disproportionate when  
8 considering the actual probation violations he committed, and that his sentence was also  
9 generally unfair in light of those violations. To prevail, Stewart must establish either that  
10 the Court of Appeals decision was unreasonable considering clearly established Supreme  
11 Court precedent, or that the decision rested upon an unreasonable determination of the  
12 facts.

13 Generally, outside of the capital context, “successful challenges to the  
14 proportionality of particular sentences have been exceedingly rare.” *Rummel v. Estelle*,  
15 445 U.S. 263, 272 (1980). And even without the benefit of AEDPA’s deferential standard  
16 of review, trial courts typically have broad discretion in sentencing so long as they impose  
17 sentences within the bounds of the statute. *See, e.g., United States v. Garrett*, 680 F.2d  
18 650, 652 (9th Cir. 1982) (“The matter of sentencing is within the discretion of the  
19 sentencing judge and is generally not reversible as long as the sentence falls within the  
20 bounds set by statute.”); *United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir.  
21 2009) (“The weight to be given the various factors in a particular case is for the discretion  
22 of the district court.”). The sentence that was imposed here was the presumptive sentence  
23 under the statute, and the Court considered the evidence presented concerning it that  
24 included Stewart’s own testimony about the severity of his actions. (Doc. 11-1 Ex. D).  
25 Stewart fails to demonstrate that the Arizona Court of Appeals decision to uphold his  
26 sentence involved an unreasonable application of Supreme Court precedent as to the  
27 proportionality or fairness of his sentence.

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1 **CONCLUSION**

2 Magistrate Judge Boyle correctly determined that Stewart's vindictive prosecution  
3 claim was procedurally barred, and that his remaining claims failed on the merits.  
4 Therefore,

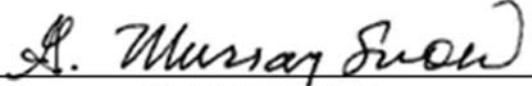
5 **IT IS ORDERED** that Magistrate Judge Boyle's R&R (Doc. 16) is adopted.

6 **IT IS FURTHER ORDERED** denying and dismissing with prejudice the  
7 Petitioner's Petition for the Writ of Habeas Corpus (Doc. 1).

8 **IT IS FURTHER ORDERED** that the request for a Certificate of Appealability  
9 and leave to proceed in forma pauperis on appeal is **DENIED** because dismissal of the  
10 Petition is justified by a plain procedural bar and jurists of reason would not find the ruling  
11 debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

12 **IT IS FURTHER ORDERED** directing the Clerk of Court to terminate this action  
13 and enter judgment accordingly.

14 Dated this 1st day of March, 2019.

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17 G. Murray Snow  
18 Chief United States District Judge  
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